

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

INDUSTRIAL SERVICE OIL CO., INC.  
1700 South Soto Street  
Los Angeles, California

U.S EPA ID No. CAD 099 452 708

Docket HWCA 06/07-P002

ORDER TO SET BRIEFING PERIOD  
FOR PETITION FOR REVIEW AND  
DENIAL OF REVIEW

California Code of Regulations,  
title 22, Section 66271.18(c)

**I. INTRODUCTION**

On December 18, 2006, the Department of Toxic Substances Control (Department or DTSC) issued a Hazardous Waste Facility Permit (Permit) decision for Industrial Service Oil Company, Inc. (ISOCI), located at 1700 South Soto Street, Los Angeles, California.

Five petitions for review (appeal) of the Department's decision were filed on or before March 5, 2007. Pursuant to California Code of Regulations, title 22, section 66271.14(b) (2), the permit decision has been stayed pending the Department's determination whether the appeals meet the criteria for granting a review. In the interim, ISOCI continues to be authorized to operate the facility under the terms and conditions of the Interim Status document.

**II. JURISDICTION**

The Department has jurisdiction over hazardous waste facility permits and the imposition of conditions on such permits pursuant to the California Health and Safety Code section 25200 et seq., and California Code of Regulations, title 22, section 66271.18.

### III. BACKGROUND

#### A. FACILITY DESCRIPTION AND HISTORY

The ISOCI Facility is a used oil and spent antifreeze treatment, storage and recycling facility, which commenced operations in 1974. In 1986, the Department granted the Facility interim status for the operation of a hazardous waste treatment and storage facility.

The Facility is located on a 2.2 acre triangular lot, and an adjacent parcel of land, at 1700 South Soto Street, in the City of Los Angeles, County of Los Angeles. The Facility property and the immediate adjacent areas are zoned for heavy industrial use interspersed with a few commercially zoned areas. The City of Vernon, located about one-half mile south of the Facility, is zoned primarily for industrial uses. The closest residences are located approximately one-half mile north of the Facility.

Current authorized operations at the Facility include the processing of used oil (which is regulated as hazardous waste) to produce recycled oil. Used oil processing involves the use of heat and addition of chemicals to separate solids, water and other impurities from the used oil. Treated used oil must continue to be managed as a hazardous waste until it has been analyzed and certified as meeting the regulatory criteria for recycled oil. The recycled oil is sold to petroleum buyers that use it for various purposes. The Facility also receives waste antifreeze, which it consolidates and ships off-site for recycling.

The Facility is currently authorized to store up to 350,000 gallons of waste liquids: up to 15,000 gallons for spent antifreeze and the remainder for used oil. One of the seven tanks is also authorized under the Facility's current Interim Status Document to be used for the storage of treated oil pending laboratory analysis and certification as recycled oil. In the event a laboratory certification analysis indicates that tested oil does not meet the regulatory standards for recycled oil, the oil continues to be regulated as a hazardous waste and is removed from the storage tank, processed in the Facility's used oil treatment unit, and re-analyzed for certification as recycled oil. Oil that continues to

1 fail certification requirements is sent off-site for disposal as a hazardous waste.

2 **B. PERMIT DECISION**

3 ISOCI submitted a RCRA-equivalent Part A permit application to the Department  
4 on May 23, 1986, with subsequent revisions dated March 9, 1989, and  
5 October 8, 2004. The Department issued an Interim Status Document, under which  
6 ISOCI has been operating, in 1986.

7 The initial Part B permit application to the Department was submitted in 1988.  
8 This Part B permit application was revised in August 1994, 1997, and September 2000  
9 (revision 0) by the Facility's consultant, Southcoast Wastec, Inc. dba JRJ Associates,  
10 under the direction of Joseph R. Johnson.

11 EP Consultants, on behalf of the Facility, submitted revised applications in June  
12 2002 (Revision 1), October 2002 (Revision 2), November 2003 (Revision 3), June 2004  
13 (Revision 4), August 2004 (Revision 5), October 2004 (Revision 6) and August 2005  
14 (Revision 7).

15 On December 15, 2005, the Department issued a public notice announcing the  
16 start of a 60-day public comment period for both the Draft Permit and California  
17 Environmental Quality Act (CEQA) Draft Environmental Impact Report (EIR). That  
18 comment period ran from December 15, 2005, through February 13, 2006. A public  
19 hearing was held on January 21, 2006, at the Ross Snyder Recreational Center, 1501  
20 East 41<sup>st</sup> Street, Los Angeles, California. During the initial public comment period and  
21 at the public hearing, members of the community requested an extension to the 60-day  
22 comment period. The Department extended the comment period until April 14, 2006.

23 On December 18, 2006, the Department issued a Notice of Final Hazardous  
24 Waste Facility Permit Decision and established a 30-day period ending on  
25 January 19, 2007 for filing a request for review of the decision under California Code of  
26 Regulations, title 22, section 66271.18. The Department also prepared a Response to  
27 Comments document, a copy of which was sent to each commenter. The Response to  
28 Comments document, the Department memorandum to file listing the revisions made to

1 the Draft Permit in response to public comments, and a redline/strikeout version of the  
2 permit showing all the changes from the Draft to the Final Permit, were made available  
3 to the public at the Department's Glendale Office and at the Robert Louis Stevenson  
4 Branch Library, 803 Spence Street, Los Angeles, California. The Final EIR was also  
5 available for review at these locations. These documents were also available for  
6 viewing on DTSC's website.

7 On January 2, 2007, the Department issued an Amended Notice of Final  
8 Hazardous Waste Facility Permit Decision, extending the period to submit a petition for  
9 review of the final permit decision to February 1, 2007.

10 On February 1, 2007, the Department issued another Amended Notice of Final  
11 Hazardous Waste Facility Permit Decision, further extending the review period to  
12 March 5, 2007.

13 **C. PERMIT APPEAL PROCESS**

14 Pursuant to California Code of Regulations, title 22, section 66271.18(a), the  
15 period for filing a petition for review (appeal) of the ISOC I final permit decision ended on  
16 March 5, 2007. Five petitions for review were received on or before that date:

- 17 1. Communities for a Better Environment by Adrienne L. Bloch, joined by  
18 California Coalition Against Taxes by Jane Williams and  
19 ProUno by Felipe Aguirre.
- 20 2. Terry Cano;
- 21 3. Industrial Service Oil Company, Inc. (ISOC I) by E P Consultants;
- 22 4. Los Angeles City Councilmember Jose Huizar;
- 23 5. Community Redevelopment Agency of the City of Los Angeles (CRA/LA).

24 The final permit decision has been stayed pursuant to California Code of  
25 Regulations, title 22, section 66271.14(b)(2), until the Department has completed  
26 review of the appeals and determined which, if any, of the issues raised in the appeals  
27 meet the criteria set forth in California Code of Regulations, title 22, section 66271.18  
28 for granting review.

#### IV. STANDARD OF REVIEW

California Code of Regulations, title 22, section 66271.18(a), provides that any person who did not file comments or participate in the public hearing on the draft permit may petition the Department for review of the final permit decision, but only with respect to those conditions in the final permit decision that differ from the draft permit. In addition, those persons who filed comments, or participated in the public hearing, on the draft permit (during the public comment period for the draft permit) may petition the Department to review any condition of the final permit decision to the extent that the issues raised in the petition for review were also raised during the public comment period for the draft permit decision, including the public hearing.

California Code of Regulations, title 22, section 66271.18(a) also provides, in pertinent part, that:

"The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the condition in question is based on:

(1) a finding of fact or conclusion of law which is clearly erroneous, or

(2) an exercise of discretion or an important policy consideration which the Department should, in its discretion, review."

California Code of Regulations, title 22, section 66271.12, specifies the extent to which issues are required to be raised during the public comment period for a draft permit decision. Specifically, this section states that "All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Department's tentative decision to deny an application or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position".

1 All but one of the Petitioners submitted comments on the Draft Permit during the  
2 public comment period. ProUno, who joined the petition filed by Communities for a  
3 Better Environment (CBE) did not submit comments or participate in the public hearing  
4 on the matter and, therefore, does not have standing to petition for review of any issues  
5 raised during the public comment period on the Draft Permit. The remaining Petitioners,  
6 including CBE, have standing to petition for review of any issues raised during the  
7 public comment period for the draft permit decision. All petitioners have standing to  
8 address any issues that pertain to changes from the draft to the final permit decision.

9 Additionally, any issues raised in the appeal that relate to the California  
10 Environmental Quality Act (CEQA, Public Resources Code, section 21000 et seq.) will  
11 not be addressed in this Order. CEQA provides a separate judicial appeal process to  
12 resolve disputes concerning compliance with CEQA. The permit appeal process is not  
13 the proper forum to raise CEQA issues, as the regulation governing permit appeals  
14 provides that petitions for review may request review of permit conditions only.

## 15 **V. FINDINGS**

16  
17 The Department has reviewed the appeals and has responded below to each  
18 Appeal Comment. Appeal Comments have been paraphrased for clarity and brevity.  
19 The Department has determined that the following appeal comments filed by Petitioners  
20 meet the criteria for granting review pursuant to California Code of Regulations, title 22,  
21 section 66271.18(a): 1-7, 1-9, 1-11, 1-12, 1-13, 1-16, 1-17, 1-20, 1-21, 1-22, 1-23,  
22 1-26, 1-27, 1-28, 1-29, 1-30, 3-1, 3-2, 3-3, and 3-4. DTSC is denying review of all  
23 remaining comments because they are either related to CEQA, pertained to the local  
24 land use permit process which is outside the Department's permit jurisdiction or the  
25 Petitioners failed to demonstrate that the permit condition was based on a finding of  
26 fact or conclusion of law which is clearly erroneous or an exercise of discretion or an  
27 important policy consideration that the Department should in its discretion review.  
28

1. **Petition filed by Communities for a Better Environment (CBE) by  
Adrienne L. Bloch, joined by California Coalition Against Taxes by  
Jane Williams and ProUno by Felipe Aguirre.**

**COMMENT 1-1 by CBE (Tanner Act Community Involvement Process):** DTSC is attempting to issue a permit for a large hazardous waste facility without requiring compliance with the Tanner Act, Health & Safety Code (H&SC) Section 25199, et seq., which establishes a detailed process to ensure community involvement in the significant land use decisions concerning hazardous waste facilities. DTSC has made a final decision on the permit, completed the CEQA process and issued a final EIR before the Tanner process is even scheduled to begin. Compliance with the Tanner Act was not required by DTSC. The Act was undermined by individual meetings with community groups that created a false sense of legitimacy.

**Response:** This Appeal Comment does not request review of a condition of the permit. DTSC finds that Petitioner has failed to meet the burden to establish that DTSC should grant a review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a) and, for this reason, denies the petition for review. The Tanner Act process is outside of DTSC's permitting jurisdiction. DTSC is required to make a permit decision notwithstanding compliance with the Tanner Act process. See Health and Safety Code section 25199.3(a).

By way of explanation, DTSC acknowledges that whenever possible, the DTSC permit application process, the California Environmental Quality Act (CEQA) process, and the Tanner Act process should run simultaneously. However, DTSC does not have the authority to require ISOC to submit a local land use application, or to require the City to begin the Tanner Act process. We are not aware of any authority empowering DTSC to compel an applicant to initiate the Tanner process. The state of the law is that the only option available to DTSC is to condition the effectiveness of the permit on the applicant obtaining any necessary local land use permits. Please also see the response to Comment 1-2 by CBE below.

1 **COMMENT 1-2 by CBE (Tanner Act Community Involvement Process):** DTSC may  
2 not approve the project until a determination by the County that the project is consistent  
3 with its Hazardous Waste Management Plan. DTSC's Special Condition 2.u., requiring  
4 that, "The permit for the proposed units shall not become effective until the applicant is  
5 granted a local land use permit." does not remedy DTSC's failure to coordinate its  
6 evaluation of the project to run simultaneously with the Tanner Act process.

7 **Response:** This Appeal Comment does not request review of a condition  
8 of the permit. DTSC finds that Petitioner has failed to meet the burden to  
9 establish that DTSC should grant a review of this issue pursuant to the criteria  
10 set forth in California Code of Regulations, title 22, section 66271.18(a) and, for  
11 this reason, denies the petition for review.

12 By way of explanation, Health & Safety Code section 25135.4 provides, in  
13 pertinent part, that no person shall "establish or expand" a facility unless a  
14 consistency finding with the county hazardous waste management plan  
15 (CHWMP) has been made by the local legislative body of the city or county in  
16 which the new offsite facility, or the expansion of an existing offsite facility, is  
17 proposed. In other words, the terms of the statute require a consistency finding  
18 prior to the establishment or expansion of the facility rather than prior to issuance  
19 of a DTSC permit decision as the Comment requests. It should be further noted  
20 that the Tanner Act process is outside of DTSC's permitting jurisdiction. DTSC is  
21 required to make a permit decision notwithstanding compliance with the Tanner  
22 Act process. See Health and Safety Code section 25199.3(a).

23 Furthermore, the ISOCI permit application also covers existing operations  
24 which are regulated under a grant of interim status. DTSC is required by law to  
25 make a final permit determination for all existing facilities under Interim Status in  
26 a timely manner. The applicable permitting standards are more stringent in  
27 several aspects than the interim status standards. Thus, DTSC is obligated to  
28 process the permit for existing units and operations to protect human health and



1 safety.

2 **COMMENT 1-3 by CBE (Spanish Translation of Key Documents):** Only the  
3 Fact Sheet, the public notice and the comment form were translated into Spanish  
4 initially. Later the executive summary of the dEIR was translated. Failure to  
5 translate all key documents into Spanish prevents equal participation by Spanish  
6 speakers.

7 **Response:** This Appeal Comment does not request review of a condition  
8 of the permit. DTSC finds that Petitioner has failed to meet the burden to  
9 establish that the Department should grant a review of this issue pursuant to the  
10 criteria set forth in California Code of Regulations, title 22, section 66271.18(a)  
11 and, for this reason, denies the petition for review.

12 By way of explanation, DTSC conducted a community survey and interviews with  
13 interested community members to develop the most appropriate outreach strategy.  
14 The Department determined that even though a majority of the residents are Hispanic,  
15 the majority of those encountered and interacted with spoke and understood English,  
16 as well as Spanish. Accordingly, the Department determined which permit documents  
17 should be translated to ensure the broadest public participation. These actions are  
18 consistent with DTSC public participation plan and policy. DTSC further finds that its  
19 expanded public outreach program for this project took into consideration the  
20 community's needs. Following are the outreach activities that provided the community  
21 with opportunities to participate in the decision-making process.

- 22 • Surveys were translated into Spanish
- 23 • Fact Sheet was translated into Spanish
- 24 • Comment forms were translated into Spanish and a self addressed stamped  
25 envelope was provided
- 26 • Public notice was published in Eastside Sun (English and Spanish  
27 newspaper)
- 28 • Aired radio announcements on Que Buena (Spanish radio station)

- Translator was available at the Public Hearing
- The executive summary of the Draft EIR was translated into Spanish and posted on DTSC's web site
- Environmental justice organizations were notified (environmental justice organizations are on DTSC's mandatory mailing list)

**COMMENT 1-4 by CBE(Community Outreach and Notification of Concerned**

**Parties)**: DTSC's outreach and public notification efforts were woefully inadequate and require correction, and were calculated to fail. Local elected officials did not receive any notification when the comment period was announced.

**Response:** This Appeal Comment does not request review of a condition of the permit. Accordingly, DTSC finds that Petitioner has failed to meet the burden to establish that the Department should grant a review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a) and, for this reason, denies the petition for review.

By way of explanation, it is clear from the public outreach activities outlined in Response 1-3 in the Response to Comments document dated December 18, 2006, that DTSC implemented an expanded public participation program for this decision. DTSC's efforts to reach out to members of the community and other stakeholders were extensive. Forty-eight individuals or organizations submitted comments, which provides some indication that the effort to reach potential stakeholders was effective.

**COMMENT 1-5 by CBE (Availability of Public Documents)**: Core documents related to the proposed action were largely inaccessible to the communities that DTSC should have targeted, as well as out of town consultants. Members of the public were forced to travel and to copy at their own cost. Documents were posted late on the website. The entire administrative record was not made available at the beginning of the public comment period.

**Response:** This Appeal Comment does not request review of a condition

1 of the permit. DTSC finds that Petitioner has failed to meet the burden to  
2 establish that the Department should grant a review of this issue pursuant to the  
3 criteria set forth in California Code of Regulations, title 22, section 66271.18(a)  
4 and, for this reason, denies the petition for review.

5 By way of explanation, DTSC extended the public comment period for an  
6 additional sixty days to ensure that interested persons had access to information.

7 DTSC's Response to Comment 1-3 (December 2006 Response to Comments)  
8 provides a detailed description of how and when information was provided.

9 These efforts were apparently effective as demonstrated by the volume of  
10 comments received from stakeholders.

11 **COMMENT 1-6 by CBE (Description of Proposed Activities in Fact Sheet):** The  
12 fact sheet produced by DTSC failed to adequately describe the project, including the  
13 plan to accept hundreds of new waste codes, storage arrangements for hazardous  
14 waste in rail cars without an adequate containment system, and the facility's  
15 enforcement history.

16 **Response:** This Appeal Comment does not request review of a  
17 condition of the permit. DTSC finds that Petitioner has failed to meet the burden  
18 to establish that the Department should grant a review of this issue pursuant to  
19 the criteria set forth in California Code of Regulations, title 22, section  
20 66271.18(a) and, for this reason, denies the petition for review.

21 By way of explanation, the Fact Sheet is meant to provide basic summary  
22 information about the facility, the action being taken by the Department and how  
23 interested persons can participate in the Department's proposed decision. The  
24 Fact Sheet adequately describes the proposed action, and refers the reader to  
25 the Draft Permit and associated documents. The Fact Sheet lists DTSC staff  
26 who may be contacted for additional information.

27 **COMMENT 1-7 by CBE (Rail Car Storage Containment):** The permit allows ISOCl to  
28 store up to 250,000 gallons of hazardous waste in rail cars for up to one year on a rail

1 spur without adequate secondary containment. Storage of this amount of hazardous  
2 waste for such an extended period of time is unprecedented in California, posing  
3 severe risks to the surrounding communities that have not been properly analyzed.

4 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
5 title 22, section 66271.18(a) and (c), the Department is granting review of the issues  
6 raised in this comment.

7 **COMMENT 1-8 by CBE (Acceptance of Additional Waste Codes):** The permit  
8 authorizes ISOC I to radically expand the scope of operations at the facility without  
9 providing sufficient protections against the new risks posed by the facility's acceptance  
10 of additional types of hazardous waste. CBE requests that DTSC amend the permit to  
11 significantly limit the number of waste codes that the facility can accept, and to require  
12 ISOC I to demonstrate that it has safely managed a limited number of additional waste  
13 codes before it may accept more waste types.

14 **Response:** This Appeal Comment does not request review of a specific  
15 condition of the permit. DTSC finds that Petitioner has failed to meet the burden  
16 to establish that the Department should grant a review of this issue pursuant to  
17 the criteria set forth in California Code of Regulations, title 22, section  
18 66271.18(a) and, for this reason, denies the petition for review. Evidence has  
19 not been provided which shows that the facility cannot manage these wastes  
20 appropriately.

21 **COMMENT 1-9 by CBE (Waste Analysis Plan):** The facility's Waste Analysis Plan  
22 (WAP) is complex and difficult to understand, and will be challenging to implement even  
23 with highly educated and trained personnel. CBE requested that personnel performing  
24 the WAP tasks have proper education and training. Figure III-2 of the WAP which  
25 refers to a flow chart for waste receiving procedures was not included in this version of  
26 the WAP. DTSC did not explain how this objective has been met. The WAP included  
27 in the Part B application is dated June 2004. There is no indication that DTSC has  
28 required ISOC I to revise the WAP to reflect that waste analysis tasks will always be

1 performed by trained personnel, or to require that ISOCI document that all personnel  
2 have received appropriate training. The WAP is unclear as to which analyses will be  
3 performed in-house by ISOCI rather than by outside laboratory services and the WAP  
4 should be revised to clarify this issue.

5 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
6 title 22, section 66271.18(a) and (c), the Department is granting review of the issues  
7 raised in this comment, and specifically regarding how the facility training plan will relate  
8 to and ensure proper implementation of the WAP.

9 **COMMENT 1-10 by CBE (Waste Analysis Plan):** A forced-air safety hood is required  
10 if "mixing experiments" are performed in-house and the WAP should be revised to  
11 clarify which analysis tasks will be performed in-house and require ISOCI to consult  
12 Cal/OSHA about their safety prior to the effective date of the permit. In addition, DTSC  
13 must analyze the potential environmental impact of this safety issue without regard to  
14 the regulatory agency involved.

15 **Response:** This Appeal Comment does not request review of a specific  
16 condition of the permit. DTSC finds that Petitioner has failed to meet the burden to  
17 establish that the Department should grant a review of this issue pursuant to the criteria  
18 set forth in California Code of Regulations, title 22, section 66271.18(a). Further, the  
19 environmental impact review requested in this Appeal Comment is a CEQA related  
20 item. CEQA provides a separate judicial appeal process to resolve disputes concerning  
21 compliance with CEQA. For these reasons, the Department denies the petition for  
22 review of the issues raised in this Appeal Comment.

23 By way of explanation, ISOCI, like any other industry or business, is required to  
24 comply with applicable worker protection requirements administered by Cal/OSHA.

25 **COMMENT 1-11 by CBE (Waste Analysis Plan):** The frequency and methodology of  
26 "fingerprint testing" for incoming hazardous waste streams should be clarified. DTSC  
27 has not stated whether ISOCI has determined if adequate laboratory methodologies are  
28 available to quantify all the chemicals listed on Table III of the application. No specific  
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1 analysis for hexavalent chromium is required even though there is a specific regulatory  
2 threshold level for this chemical in 22 CCR § 66261.24.

3 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
4 title 22, section 66271.18(a) and (c), the Department is granting review of the issues  
5 raised in this comment.

6 **COMMENT 1-12 by CBE (Waste Analysis Plan):** DTSC has not identified the  
7 adequacy of the detection limits for PCBs and it is unclear why the facility will be  
8 allowed to process wastes that contain PCBs with concentrations up to 49 ppm.

9 **Response:** Pursuant to the criteria set forth in California Code of Regulations, title 22,  
10 section 66271.18(a) and (c), the Department is granting review of the issues raised in  
11 this comment.

12 **COMMENT 1-13 by CBE (Waste Analysis Plan):** Current operations test for PCBs  
13 after commingling, which conflicts with a requirement of the permit, which requires  
14 testing before commingling of the waste oil. Conditions to ensure that dilution does not  
15 occur should be imposed by DTSC if the facility submits a permit modification request  
16 to modify the WAP. DTSC must amend the permit to ensure that PCBs are not  
17 introduced or discharged from the facility's wastewater treatment unit.

18 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
19 title 22, section 66271.18(a) and (c), the Department is granting review of the issues  
20 raised in this comment.

21 **COMMENT 1-14 by CBE (Waste Analysis Plan):** The permit should require the facility  
22 to test for dioxin. Moreover, the health risk assessment does not adequately evaluate  
23 the risk associated with accepting dioxins and furans or producing them as a result of  
24 incomplete combustion ..."

25 **Response:** This Appeal Comment does not request review of a specific  
26 condition of the permit. DTSC finds that Petitioner has failed to meet the burden to  
27 establish that the Department should grant a review of this issue pursuant to the criteria  
28 set forth in California Code of Regulations, title 22, section 66271.18(a).

1 By way of explanation, the facility is not authorized to accept dioxins and there  
2 are no permitted processes at the facility that are likely to produce dioxins or furans. In  
3 addition, the health risk evaluation requested is a CEQA related item. CEQA provides a  
4 separate judicial appeal process to resolve disputes concerning compliance with CEQA.  
5 For these reasons, the Department denies the petition for review of the issues raised in  
6 this Appeal Comment.

7 **COMMENT 1-15 by CBE (Waste Analysis Plan):** This permit should not be issued  
8 unless and until there is review and concurrence by the Statewide Compliance Division.

9 **Response:** This Appeal Comment does not request review of a condition of  
10 the permit. DTSC finds that Petitioner has failed to meet the burden to establish that  
11 the Department should grant a review of this issue pursuant to the criteria set forth in  
12 California Code of Regulations, title 22, section 66271.18(a) and, for these reasons, the  
13 petition to review is denied. The regulations require that the permit be issued by the  
14 Department. They do not require review by any particular unit within the Department.

15 **COMMENT 1-16 by CBE (Acceptance of Reactive Hazardous Waste):** Language  
16 ensuring that ISOCI will analyze each shipment of bulk waste for the characteristic of  
17 reactivity must be added to both the WAP and to Permit special condition 2.q.

18 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
19 title 22, section 66271.18(a) and (c), the Department is granting review of the issues  
20 raised in this comment.

21 **COMMENT 1-17 by CBE (Acceptance of Reactive Hazardous Waste):** Ten percent  
22 sampling frequency for containerized waste is insufficient to ensure ISOCI will not be  
23 accepting reactive wastes. All containers of waste codes F007-F011 should be  
24 sampled and analyzed to ensure none of them exhibit the characteristic of reactivity.  
25 Table III-1 of the WAP should be revised to remove any reference to reactivity being  
26 allowed for waste codes F007-F011. ISOCI should be expressly prohibited from  
27 accepting all waste codes in which reactives may be present.

28 **Response:** Pursuant to the criteria set forth in California Code of Regulations,

1 title 22, section 66271.18(a) and (c), the Department is granting review of the issues  
2 raised in this comment.

3 **COMMENT 1-18 by CBE (Storage of Cyanide-Containing Hazardous Waste):** CBE

4 is extremely concerned that the permit allows the facility to accept cyanide-containing  
5 hazardous waste and that such wastes could be stored in an unsafe railcar on the rail  
6 spur for up to one year. ISOC should not be allowed to accept cyanide-containing  
7 waste but, if it does, DTSC must require tougher security measures at the facility, to  
8 protect the public.

9 **Response:** The Appeal Comment presents no specific facts showing  
10 why the security requirements which the facility must meet in California Code of  
11 Regulations, title 22, section 66264.14 are not protective. Accordingly, the  
12 Department finds that Petitioner has failed to meet the burden to establish that  
13 the Department should grant a review of this issue pursuant to the criteria set  
14 forth in California Code of Regulations, title 22, section 66271.18(a), and for this  
15 reason denies the request for review.

16 **COMMENT 1-19 by CBE (Truck Loading and Unloading Containment):** The  
17 containment capacities of the truck loading/unloading areas are insufficient. Health and  
18 Safety Code section 25200.19 provides that loading/unloading must be conducted  
19 within containment that is "capable of collecting leaks and spills that may reasonably be  
20 anticipated to occur during loading and unloading operations." It is reasonable to  
21 anticipate that a large earthquake can cause a release. Even if DTSC disagrees,  
22 sound policy requires DTSC to require full containment to protect the surrounding  
23 community. Further, the Permit must be amended to require higher containment walls  
24 and larger containment footprints for the truck loading/unloading areas based on the  
25 significant impact from a potential release, the risk of which is increased by the staging  
26 of trucks awaiting unloading, anticipated to take up to 24 hours.

27 **Response:** Health and Safety Code section 25200.19 requires spill  
28 containment for leaks and spills that may reasonably be anticipated during



1 loading and unloading operations. The risk of an earthquake causing a truck to  
2 tip over or otherwise release its contents is too attenuated to warrant imposition  
3 of additional containment on the facts presented. Accordingly, the Department  
4 finds that Petitioner has failed to meet the burden to establish that the  
5 Department should grant a review of this issue pursuant to the criteria set forth in  
6 California Code of Regulations, title 22, section 66271.18(a), and for this reason  
7 denies the request for review.

8 **COMMENT 1-20 by CBE (Truck Loading and Unloading Activities):** DTSC must  
9 clarify exactly which hazardous waste management activities will be taking place in the  
10 "Truck Loading/Unloading and Storage Areas" described in Figure II-4 in the Part B  
11 application. If the area is used for storage, this is one more reason secondary  
12 containment meeting the regulatory requirements for hazardous waste container  
13 storage of California Code of Regulations, title 22, section 66264.175 should be  
14 constructed for the area.

15 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
16 title 22, section 66271.18(a) and (c), the Department is granting review of the issues  
17 raised in this comment.

18 **COMMENT 1-21 by CBE (Truck Loading and Unloading Activities):** DTSC must  
19 add a narrative to the permit that describes both the truck loading/unloading activities  
20 and the loading/unloading areas, as other permits do.

21 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
22 title 22, section 66271.18(a) and (c), the Department is granting review of the issue  
23 raised in this comment.

24 **COMMENT 1-22 by CBE (Segregation of Incompatible Wastes):** The permit must  
25 be amended to include a condition specifying how ISOCI will comply with the  
26 requirements of California Code of Regulations, title 22, section 66264.177, which  
27 requires segregation of incompatible wastes.

28 **Response:** Pursuant to the criteria set forth in California Code of Regulations,

1 title 22, section 66271.18(a) and (c), the Department is granting review of the issue  
2 raised in this comment.

3 **COMMENT 1-23 by CBE(Segregation of Incompatible Wastes):** DTSC must require  
4 ISOCI to demonstrate how the facility will evaluate whether an incoming waste is  
5 incompatible with other wastes that are being stored at the facility, and include  
6 appropriate conditions in the permit to ensure that this evaluation occurs.

7 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
8 title 22, section 66271.18(a) and (c), the Department is granting review of the issue  
9 raised in this comment.

10 **COMMENT 1-24 by CBE (Operating Record):** CBE demands that DTSC not issue the  
11 permit until it is certain that all regulations and procedures, including Operating Record  
12 implementation, will be properly followed, and the permit has been amended to require  
13 that the Operating Record be maintained in electronic form.

14 **Response:** Except for its final clause, this Appeal Comment does not  
15 relate to a condition of the permit and the petition for review is denied for this  
16 reason. With regard to the statement in the final clause regarding an electronic  
17 Operating Record, DTSC agrees that, although an electronic Operating Record  
18 may be desirable, a manual Operating Record is sufficiently protective.  
19 Accordingly, the Department finds that Petitioner has failed to meet the burden to  
20 establish that the Department should grant a review of this issue pursuant to the  
21 criteria set forth in California Code of Regulations, title 22, section 66271.18(a),  
22 and for this reason denies the request for review.

23 **COMMENT 1-25 by CBE (Description of Equipment Used to Handle Hazardous**  
24 **Waste):** DTSC should require ISOCI to list in the Part B application every piece of  
25 equipment that will be used to handle hazardous waste. DTSC should require  
26 compliance with 22 CCR §§ 66270.14 and 66264.112(b)(4).

27 **Response:** The description of equipment to be used at the facility,  
28 contained in Section VIII (Management Practices) of the Part B Permit, fulfills

1 these requirements. See Response 4-26 of DTSC's Response to Comments  
2 dated December 2006.

3 By way of explanation, California Code of Regulations, title 22, section  
4 66270.14(b)(8) refers to procedures, structures, or equipment used at the facility  
5 to prevent or mitigate releases, spills, and human exposure. After review of the  
6 application, DTSC finds that the application is adequate in this respect.  
7 Accordingly, the Department finds that Petitioner has failed to meet the burden to  
8 establish that the Department should grant a review of this issue pursuant to the  
9 criteria set forth in California Code of Regulations, title 22, section 66271.18(a),  
10 and for this reason denies the request for review.

11 **COMMENT 1-26 by CBE (Staging of Hazardous Waste Containers):** DTSC must  
12 scrutinize ISOCI's hazardous waste container management practices in greater detail  
13 and amend the permit to include a description of authorized staging practices for  
14 hazardous waste containers.

15 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
16 title 22, section 66271.18(a) and (c), the Department is granting review of authorized  
17 staging practices for hazardous waste containers.

18 **COMMENT 1-27 by CBE (Storage Tank Assessment):** DTSC must amend the permit  
19 to require ISOCI to inspect and certify its tanks every three years by a professional  
20 engineer. DTSC has included a special permit condition requiring tank assessment  
21 every five years in accordance with the API 653 standard but it does not require that  
22 inspection be certified by a professional engineer. DTSC also has not explained the  
23 basis for selecting the 5 year interval. The special condition must be revised to require  
24 certification by a California registered professional engineer with a confined space  
25 certification.

26 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
27 title 22, section 66271.18(a) and (c), the Department is granting review of the issue  
28 raised in this comment.

1 By way of explanation, it should be noted that Special Condition (1)a. does  
2 require the tank assessments to be done in accordance with California Code of  
3 Regulations, title 22, division 4.5, article 14, chapter 10, which includes the  
4 requirements that these assessments be certified by a California registered  
5 professional engineer.

6 **COMMENT 1-28 by CBE (Closure Cost Estimates):** The closure cost estimates for  
7 both existing and proposed operations, stated in special condition 1 of the Permit, are  
8 insufficient.

9 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
10 title 22, section 66271.18(a) and (c), the Department is granting review of the issue  
11 raised in this comment.

12 **COMMENT 1-29 by CBE (Closure Plan):** CBE requests that DTSC require ISOCI to  
13 revise the closure plan to list all facilities permitted to handle waste generated during  
14 closure of the facility. CBE also requests that the closure plan be revised so that it is  
15 consistent with the closure cost estimate.

16 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
17 title 22, section 66271.18(a) and (c), the Department is granting review of the issue  
18 raised in this comment.

19 **COMMENT 1-30 by CBE (Wastewater Treatment System):** The description of waste  
20 streams to be treated by the Waste Water Treatment System (WWTS) in the permit is  
21 inconsistent with the description in the HRA. "Oil containing liquid waste" is one of the  
22 waste streams going to the WWTS, which can include PCB's. DTSC must ensure that  
23 PCB's are prevented from entering the WWTS. Based on the waste codes to be  
24 accepted by the WWTS, it appears that it should be subject to Clean Water Act  
25 requirements under the definition of "centralized waste treatment facility" See  
26 40CFR437.20, et seq. The permit must be amended to specifically require ISOCI to  
27 comply with any applicable pre-treatment standards established by Clean Water Act  
28 regulations.

1        **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
2 title 22, section 66271.18(a) and (c), the Department is granting review of the issue  
3 raised in this comment.

4        **COMMENT 1-31 by CBE (Part B Application):** CBE requests that DTSC require  
5 ISOCI to reorganize the Part B application, remove extraneous portions, ensure all  
6 sections are current, and eliminate internal inconsistencies. Three Notices of  
7 Deficiency should have been issued for the Part B application.

8        **Response:** This Appeal Comment does not request review of a condition  
9 of the permit. Accordingly, the Department finds that Petitioner has failed to meet  
10 the burden to establish that the Department should grant a review of this issue  
11 pursuant to the criteria set forth in California Code of Regulations, title 22,  
12 section 66271.18(a), and for this reason denies the request for review.

13        **COMMENT 1-32 by CBE (Engineer Certification of Part B Application):** It is unclear  
14 from the Part B application which engineer prepared the application. The most recent  
15 signature by a professional engineer in the permit application is several years old even  
16 though elements of the application were completed more recently. The design  
17 drawings for the treatment processes include numerous disclaimers stating that a  
18 particular drawing was prepared by others and that the engineer did not review or  
19 approve of the drawing. DTSC must require that the design engineer issue a statement  
20 endorsing the design drawings for the treatment processes and certify that the  
21 processes are protective of public health and safety.

22        **Response:** This Appeal Comment does not request review of a condition  
23 of the permit. Accordingly, the Department finds that Petitioner has failed to  
24 meet the burden to establish that the Department should grant a review of this  
25 issue pursuant to the criteria set forth in California Code of Regulations, title 22,  
26 section 66271.18(a), and for this reason denies the request for review.

27        As noted in Response 4-36 of the December 2006 Response to  
28 Comments, the Part B application was prepared by the ISOCI facility, although

1 several engineers worked on portions of the facility's Part B application. The  
2 regulations require that only the tank assessments and the secondary  
3 containment design and calculations be prepared and certified by an  
4 independent professional engineer registered in California. Upon review, DTSC  
5 has determined that Tank and secondary containment assessments and  
6 certifications, as presented in the Part B Application, Volumes 2 and 6, meet the  
7 applicable regulatory requirements. The drawings with qualifying statements  
8 mentioned in the comment are not a part of Volume 6 of the Part B Application,  
9 which contains the required certifications.

10 **COMMENT 1-33 BY CBE (ISOCI's Compliance Record):** CBE is concerned  
11 that dEIR omitted discussion of ISOCI's compliance record and wants DTSC to  
12 re-circulate the EIR for further review.

13 **Response:** This Appeal Comment pertains to the EIR, preparation of which is a  
14 part of the CEQA process. CEQA provides a separate judicial appeal process to  
15 resolve disputes concerning compliance with CEQA. The comment does not request  
16 review of a condition of the permit. DTSC finds that Petitioner has failed to meet the  
17 burden to establish that the Department should grant a review of this issue pursuant to  
18 the criteria set forth in California Code of Regulations, title 22, section 66271.18(a) and,  
19 for these reasons, the petition to review is denied.

20 **COMMENT 1-34 by CBE (ISOCI's Compliance Record):** ISOCI should be placed into  
21 DTSC's Enhanced Surveillance Inspection category until such time that the facility is  
22 inspected and no violations are found.

23 **Response:** This Appeal Comment does not request review of a condition  
24 of the permit. Accordingly, DTSC finds that Petitioner has failed to meet the  
25 burden to establish that the Department should grant a review of this issue  
26 pursuant to the criteria set forth in California Code of Regulations, title 22,  
27 section 66271.18(a) and, for this reason, denies the request for review.  
28 Notwithstanding denial of this request for review, DTSC retains its rights to

1 conduct enhanced surveillance and monitoring at ISOC I if in the future it is  
2 determined that such action is necessary.

3 **COMMENT 1-35 by CBE (CORRECTIVE ACTION):** The Permit requires that ISOC I  
4 conduct corrective action pursuant to the Corrective Action Consent Agreement issued  
5 on August 11, 2000. However, the permit does not establish a date by which the RFI  
6 must be performed. DTSC's failure to include a compliance schedule for completion of  
7 the RFI violates federal RCRA and state law. DTSC must comply with applicable  
8 requirements by establishing schedules of compliance for corrective action at the facility  
9 and amending the permit to include those schedules. The permit must be amended to  
10 conduct corrective action beyond the facility boundary, where necessary.

11 **Response:** The ISOC I facility is obligated to implement the RFI and other  
12 requirements that are necessary to comply with the Corrective Action Consent  
13 Agreement, according to the schedule that is agreed to in the Consent Agreement.  
14 Although a date is not specified for completion of the RFI and other requirements, the  
15 Consent Agreement requires that each phase of the corrective action be completed  
16 within a certain number of days after DTSC approval. In the end, this ensures that  
17 each step is completed to the DTSC's satisfaction, with the result that the corrective  
18 action is effective and protective. Accordingly, DTSC finds that Petitioner has failed to  
19 meet the burden to establish that the Department should grant a review of this issue  
20 pursuant to the criteria set forth in California Code of Regulations, title 22, section  
21 66271.18(a), and for this reason denies the request for review.

22 **COMMENT 1-36 by CBE (CORRECTIVE ACTION):** DTSC must amend the permit to  
23 require ISOC I to evaluate groundwater contamination and soil vapor intrusion within a  
24 short period of time and prior to completion of the RFI.

25 **Response:** The ISOC I facility is involved in and will be implementing  
26 requirements that are necessary to comply with the Corrective Action Consent  
27 Agreement, according to the schedule set forth in the Consent Agreement.  
28 Interested parties are encouraged to participate in the corrective action process

1 for the facility. Accordingly, DTSC finds that Petitioner has failed to meet the  
2 burden to establish that the Department should grant a review of this issue  
3 pursuant to the criteria set forth in California Code of Regulations, title 22,  
4 section 66271.18(a) and, for this reason, denies the request for review.

5 **COMMENT 1-37 by CBE (CORRECTIVE ACTION):** DTSC must determine whether  
6 the drinking water well located one-quarter mile from the facility is an active production  
7 well and whether it is threatened by contamination from the facility, and provide this  
8 critical information to the public.

9 **Response:** This Appeal Comment does not request review of a condition of the  
10 permit. Accordingly, DTSC finds that Petitioner has failed to meet the burden to  
11 establish that the Department should grant a review of this issue pursuant to the criteria  
12 set forth in California Code of Regulations, title 22, section 66271.18(a) and, for this  
13 reason, denies the request for review. As stated in Response 4-35 of DTSC's  
14 Response to Comments of December 2006, ISOCi will be required to identify the  
15 nature and extent of contamination as part of the RFI. If it is determined that  
16 contamination has migrated from the facility and has impacted the groundwater, DTSC  
17 will require ISOCi to implement a Corrective Action Plan to address the contamination.  
18 Also, please note that Corrective Action will be required at the facility regardless of the  
19 outcome of the permit decision.

20 **COMMENT 1-38 by CBE:** Commencing at page 36 of its petition, in comments IV. A  
21 through IV. K, the petitioner raises issues with regard to the Health Risk Assessment.

22 **Response:** These Appeal Comments pertain to the Health Risk Assessment,  
23 which is a part of the CEQA document for this project. CEQA provides a separate  
24 judicial appeal process to resolve disputes concerning compliance with CEQA. Also,  
25 these comments do not request review of a condition of the permit. DTSC finds that  
26 Petitioner has failed to meet the burden to establish that the Department should grant a  
27 review of this issue pursuant to the criteria set forth in California Code of Regulations,  
28 title 22, section 66271.18(a). For these reasons, the Department denies the petition for



1 review of the issues raised in these Appeal Comments.

2 **COMMENT 1-39 by CBE:** Commencing at page 45 of its petition, in comments V. A  
3 through V. U, and VI., the petitioner raises issues with regard to the Final EIR.

4 **Response:** These Appeal Comments pertain to the CEQA documents for  
5 this project. CEQA provides a separate judicial appeal process to resolve  
6 disputes concerning compliance with CEQA. Also, these Appeal Comments do  
7 not request review of a condition of the permit. DTSC finds that Petitioner has  
8 failed to meet the burden to establish that the Department should grant a review  
9 of this issue pursuant to the criteria set forth in California Code of Regulations,  
10 title 22, section 66271.18(a). For these reasons, the Department denies the  
11 petition for review of the issues raised in these Appeal Comments.

12 **2. Petition filed by Terry Cano.**

13 **Comment 2- 1 by Terry Cano:** Community outreach was not adequate.

14 **Response:** This Appeal Comment does not request review of a condition  
15 of the permit. Therefore, DTSC finds that Petitioner has failed to meet the  
16 burden to establish that the Department should grant a review of this issue  
17 pursuant to the criteria set forth in California Code of Regulations, title 22,  
18 section 66271.18(a), and for this reason, the petition to review is denied.

19 By way of explanation, the Department believes the public outreach  
20 program for this permit application satisfies all applicable regulatory  
21 requirements. As explained in Response 1-3 of DTSC's Response to Comments  
22 document dated December 18, 2006, DTSC carried out extensive public  
23 outreach efforts to inform the affected members of the public and stakeholders of  
24 this permit decision. Further, the effectiveness of the program is demonstrated  
25 by the numerous and thoughtful comments received during the process. See  
26 also the response to Comment 1-3.

1 **Comment 2- 2 by Terry Cano:** There was no confirmation from the emergency  
2 responders listed that they will be able to safely handle an incident.

3 **Response:** This Appeal Comment does not request review of a condition  
4 of the permit. Therefore, DTSC finds that Petitioner has failed to meet the  
5 burden to establish that the Department should grant a review of this issue  
6 pursuant to the criteria set forth in California Code of Regulations, title 22,  
7 section 66271.18(a), and for this reason, the petition to review is denied.

8 By way of explanation, the local fire department and other emergency  
9 responders can be expected to review the proposed development if and when  
10 the facility begins the process of obtaining any local permits.

11 **Comment 2- 3 by Terry Cano:** DTSC should review why the city does not have  
12 jurisdiction over granting of this permit.

13 **Response:** This Appeal Comment does not request review of a  
14 condition of the permit. Therefore, DTSC finds that Petitioner has failed to meet  
15 the burden to establish that the Department should grant a review of this issue  
16 pursuant to the criteria set forth in California Code of Regulations, title 22,  
17 section 66271.18(a), and for this reason, the petition to review is denied.

18 By way of explanation, the legislature of California has given DTSC the  
19 authority and jurisdiction over the issuance of hazardous waste facility permits.  
20 Although the City of Los Angeles does not have such authority or jurisdiction, it is  
21 empowered in areas that are not within the jurisdiction of DTSC, such as land  
22 use decisions. Many government agencies may be involved in the process of  
23 reviewing and approving various types of permits or authorizations that may be  
24 necessary to operate the proposed facility. DTSC's role in providing a decision  
25 on the hazardous waste facility permit is only a part of the entire process.

26 **Comment 2- 4 by Terry Cano:** City Sanitation was not notified that ISOC will be  
27 discharging its materials into the City's public sewer system.

28 **Response:** This Appeal Comment does not request review of a condition  
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1 of the permit. Therefore, DTSC finds that Petitioner has failed to meet the  
2 burden to establish that the Department should grant a review of this issue  
3 pursuant to the criteria set forth in California Code of Regulations, title 22,  
4 section 66271.18(a), and for this reason, the petition to review is denied.

5 Please note that the facility must comply with all laws and regulations  
6 applicable to its operations, including discharges into the sewer system. Further,  
7 the General Conditions require that the facility to obtain the necessary permits  
8 prior to construction of new units such as the Waste Water Treatment System  
9 (WWTS), thereby ensuring the involvement of City Sanitation.

10 **Comment 2- 5 by Terry Cano:** In the DTSC acknowledgment of one truck spill every  
11 six years it was not clear what the exposure danger would be to residents and local  
12 schools, and the evacuation process, if needed.

13 **Response:** This Appeal Comment does not request review of a condition of the  
14 permit. Further, this Appeal Comment appears to pertain to the CEQA documents for  
15 this project. CEQA provides a separate judicial appeal process to resolve disputes  
16 concerning compliance with CEQA. The Department finds that Petitioner has failed to  
17 meet the burden to establish that the Department should grant a review of this issue  
18 pursuant to the criteria set forth in California Code of Regulations, title 22, section  
19 66271.18(a). For these reasons, the Department denies the petition for review of the  
20 issues raised in this Appeal Comment.

21 **Comment 2- 6 by Terry Cano:** DTSC should review the length of time a company can  
22 operate under an interim permit, and the time a company has to complete the  
23 application process. This company has been operating under an interim permit for 21  
24 years.

25 **Response:** This Appeal Comment does not request review of a condition of the  
26 permit. DTSC finds that Petitioner has failed to meet the burden to establish that the  
27 Department should grant a review of this issue pursuant to the criteria set forth in  
28 California Code of Regulations, title 22, section 66271.18(a). For this reason, the

1 Department denies the petition for review of the issues raised in this Appeal Comment.

2 **Comment 2- 7 by Terry Cano:** DTSC should review the policy on what is an  
3 acceptable risk to residents and workers and, what compensation (should be paid) to  
4 those affected by an acceptable risk.

5 **Response:** This Appeal Comment does not request review of a condition  
6 of the permit. Therefore, DTSC finds that Petitioner has failed to meet the  
7 burden to establish that the Department should grant a review of this issue  
8 pursuant to the criteria set forth in California Code of Regulations, title 22,  
9 section 66271.18(a). Further, this Appeal Comment appears to pertain to the  
10 CEQA documents for this project. CEQA provides a separate judicial appeal  
11 process to resolve disputes concerning compliance with CEQA. For these  
12 reasons, the Department denies the petition for review of the issues raised in this  
13 Appeal Comment.

14 **Comment 2- 8 by Terry Cano:** DTSC should review policy on how many violations a  
15 company can commit before their permit is revoked.

16 **Response:** The Appeal Comment does not request review of a condition  
17 of the permit. DTSC finds that Petitioner has failed to meet the burden to  
18 establish that the Department should grant a review of this issue pursuant to the  
19 criteria set forth in California Code of Regulations, title 22, section 66271.18(a),  
20 and for this reason, the petition to review is denied.

21 By way of explanation, under applicable law DTSC may exercise its  
22 discretion to commence revocation proceedings against a permittee where  
23 certain requirements are met. See Health and Safety Code section 25186.

24 **Comment 2- 9 by Terry Cano:** Appended to Ms. Cano's submission is a  
25 signature petition with approximately 210 signatures, with the following statement  
26 at the top of each page: "We the undersigned join together with Los Angeles  
27 City Councilmember Jose Huizar in opposing the expansion of a hazardous  
28 waste facility at 1700 S. Soto in Boyle Heights and we oppose any conditional

1 use permit being granted for the expansion. The expansion of this facility would  
2 pose a significant health and public safety risks, endangering the lives of the  
3 people of the City of Los Angeles and would undermine plans for revitalization of  
4 the community and the adjacent Los Angeles River."

5 **Response:** The Appeal Comment does not request review of a condition  
6 of the permit. DTSC finds that Petitioner has failed to meet the burden to  
7 establish that the Department should grant a review of this issue pursuant to the  
8 criteria set forth in California Code of Regulations, title 22, section 66271.18(a).  
9 For this reason, the Department denies the petition for review of the issue raised  
10 in this Appeal Comment.

11 By way of explanation, DTSC is not the agency that will be making the  
12 conditional use decision regarding expansion. The City of Los Angeles has such  
13 authority and the petitioner is advised to take up this matter with the local land  
14 use authority.

15 **3. Petition filed by E P CONSULTANTS on behalf of ISOCI:**

16 **Comment 3-1 by ISOCI:** Petitioner states that the requirement in the draft permit for  
17 PCB testing on each truck-to-receiving tank transfer of used oil is unnecessary and  
18 establishes a precedent which would pose an obstacle to the routine collection and  
19 transportation of used oil in California. Special Condition 2(b) on page 52 of the Final  
20 Permit requires that information sheets and waste profile forms shall include results for  
21 PCBs for all incoming loads. This requirement should be modified.

22 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
23 title 22, section 66271.18(a) and (c), the Department is granting review of the issues  
24 raised by this comment.

25 **Comment 3-2 by ISOCI:** Special Condition 1(b) on page 52 of the Final Permit, the  
26 closure cost estimate (CCE), represents an erroneous application of the law. The CCE  
27 is based on an actual quote from a third-party contractor. DTSC used one or more  
28 software programs to develop its estimate.

1       **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
2 title 22, section 66271.18(a) and (c), the Department is granting review of the issue  
3 raised by this comment.

4       **Comment 3-3 by ISOCI:** Special Condition 2(f) on page 53 of the Final Permit,  
5 requiring that all waste profiles shall be analyzed by a certified laboratory on an annual  
6 basis. This requirement is unnecessarily burdensome and costly to generators,  
7 especially those who conduct auto and truck repair and maintenance services and  
8 produce used oil and spent antifreeze.

9       **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
10 title 22, section 66271.18(a) and (c), the Department is granting review of the issue  
11 raised in this comment.

12       **Comment 3-4 by ISOCI:** Special Condition 2(u) on page 57 of the Final Permit states,  
13 as a new condition, that "the permit for the proposed units shall not become effective  
14 until the applicant is granted a local land used (sic) permit." It is clearly erroneous for  
15 DTSC to impose land use conditions which are not within DTSC's statutory jurisdiction,  
16 and this statement should be stricken from the permit. The first part of the Special  
17 Condition, stating that ISOCI shall not begin construction without the required local  
18 permits is sufficient to ensure that ISOCI will obtain land use permits as necessary and  
19 required by local laws and regulations. ISOCI, located within an M3 "heavy industrial"  
20 zone, is permitted by right to conduct various existing and proposed activities.

21       **Response :** Pursuant to the criteria set forth in California Code of Regulations,  
22 title 22, section 66271.18(a) and (c), the Department is granting review of the issue  
23 raised in this comment.

24       **4.      Petition filed by Los Angeles City Councilmember Huizar**

25       **Comment 4-1 by Councilmember Huizar (BOYLE HEIGHTS COMMUNITY PLAN**

26       **OBJECTIVES):** The Final EIR dated December 2006 indicated that the Boyle Heights  
27 Community Plan has the objective to preserve industrial land for industrial uses. That is  
28 a myopic view of the community plan. The Boyle Heights Community Plan is currently

1 being rewritten as one of the seven community plans being entirely revamped by the  
2 Department of City Planning. The newly rewritten Plan will incorporate further  
3 opportunities for redevelopment and revitalization, transit-oriented development and  
4 industrial/residential mixed use, in addition to significant incorporation of the community  
5 with the Los Angeles River and the implementation of urban design guidelines. This  
6 policy information was not known at the time of the original assessment and DTSC  
7 should most certainly consider it.

8       **Response:** This Appeal Comment does not request review of a condition of the  
9 permit. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish  
10 that the Department should grant a review of this issue pursuant to the criteria set forth  
11 in California Code of Regulations, title 22, section 66271.18(a). Further, this Appeal  
12 Comment appears to pertain to the EIR, which is a CEQA document for this project.  
13 CEQA provides a separate judicial appeal process to resolve disputes concerning  
14 compliance with CEQA. For these reasons, the Department denies the petition for  
15 review of the issues raised in this Appeal Comment.

16 **Comment 4-2 by Councilmember Huizar (FUTURE LAND USES):** Pages 34-35 of  
17 the Health Risk Assessment contains a factual error and makes presumptions about  
18 future land uses in an area that has been clearly identified in public policy for  
19 redevelopment and which is currently undergoing a complete overhaul of its Community  
20 Plan. Gold Line expansion and transit oriented development is being planned and  
21 promoted which could easily have a residual affect on the development in this area.  
22 The Los Angeles River Master Plan will revitalize the Los Angeles River, offer  
23 connectivity and access from communities all along the historic water channel and  
24 provide opportunities to reassess zoning and planning needs in areas near and  
25 adjacent to the River. This facility is directly adjacent to the Los Angeles River.

26       **Response:** This Appeal Comment does not request review of a condition  
27 of the permit. Therefore, DTSC finds that Petitioner has failed to meet the  
28 burden to establish that the Department should grant a review of this issue

1 pursuant to the criteria set forth in California Code of Regulations, title 22,  
2 section 66271.18(a). Further, this Appeal Comment appears to pertain to the  
3 Risk Assessment, which is a supplemental document of the EIR, and is a CEQA  
4 document for this project. CEQA provides a separate judicial appeal process to  
5 resolve disputes concerning compliance with CEQA. For these reasons, the  
6 Department denies the petition for review of the issues raised in this Appeal  
7 Comment.

8 **Comment 4-3 by Councilmember Huizar (POPULATION, HOUSING, AND**  
9 **CULTURAL RESOURCES)**: In the Final EIR there are erroneous statements of fact,  
10 such as Chapter 3-1, which states population, housing and cultural resources are  
11 considered less than significant resources in this area.

12 **Response:** This Appeal Comment does not request review of a condition  
13 of the permit. Therefore, DTSC finds that Petitioner has failed to meet the  
14 burden to establish that the Department should grant a review of this issue  
15 pursuant to the criteria set forth in California Code of Regulations, title 22,  
16 section 66271.18(a). Further, this Appeal Comment pertains to the EIR, which is  
17 a CEQA document for this project. CEQA provides a separate judicial appeal  
18 process to resolve disputes concerning compliance with CEQA. For these  
19 reasons, the Department denies the petition for review of the issues raised in this  
20 Appeal Comment.

21 **Comment 4-4 by Councilmember Huizar (NOx EMISSIONS MITIGATION**  
22 **OPTIONS)**: In Attachment 1 – Statement of Finding; Overriding considerations; and  
23 Mitigation, Monitoring and Reporting Plan, DTSC indicates the project impacts due to  
24 the operation of this facility would exceed significance thresholds for nitrogen oxide  
25 emissions and will remain significant. DTSC indicates mitigation measures will not  
26 reduce NOx emissions from truck and railcar activities below the significance threshold  
27 and that no other feasible mitigation measures or project alternatives have been  
28 identified. In the same document, DTSC identifies two project alternatives: the No



1 Project Alternative (redaction of all permission to operate) and the Reduced Operation  
2 Project Alternative (continuing current operations without expansion or increased  
3 operations). The Final EIR identifies the latter alternative as the environmentally  
4 superior choice and would reduce overall project impacts. This is a factual error and  
5 draws an erroneous conclusion. DTSC states that no other feasible mitigation  
6 measures have been identified, though it identified the latter alternative as the  
7 environmentally preferred choice. It is a factual error to indicate no other mitigation  
8 measures have been identified.

9 **Response:** This Appeal Comment does not request review of a condition  
10 of the permit. Therefore, DTSC finds that Petitioner has failed to meet the  
11 burden to establish that the Department should grant a review of this issue  
12 pursuant to the criteria set forth in California Code of Regulations, title 22,  
13 section 66271.18(a). Further, this Appeal Comment appears to pertain to a  
14 CEQA document for this project. CEQA provides a separate judicial appeal  
15 process to resolve disputes concerning compliance with CEQA. For these  
16 reasons, the Department denies the petition for review of the issues raised in this  
17 Appeal Comment.

18 **Comment 4-5 by Councilmember Huizar (COMPLIANCE ISSUES AND**  
19 **BURDEN ON CITY EMERGENCY & LIFE SUPPORT RESOURCES):** During  
20 inspections conducted in May of 1992, February 1993, September 1993, and  
21 July 1994, ISOCI was cited for violations. With significant compliance issues on  
22 their record as a simple oil and anti-freeze recycling facility, it does not seem  
23 prudent to allow the expansion of this facility for processing and long-term  
24 storage of a significantly wider range of hazardous and toxic materials including  
25 hazardous wastewater, sludge, and a myriad of other chemical contaminants  
26 which are known to be hazardous, cancer-causing agents. The DTSC is  
27 erroneous in its assessment that the ISOCI is equipped to handle these toxins in  
28 a safe manner, and I appeal to the DTSC to revoke the pending approval of this

1 permit. The City of Los Angeles, not the DTSC, will be the agency called upon to  
2 bear the burden of what I believe could be a grave mistake in the issuance of  
3 this permit. The people of Los Angeles and the life support and emergency  
4 response systems of our City would bear the burden in the event of a spill, yet to  
5 this date the City has had no legal jurisdiction over the permitting process. The  
6 location of this facility near the Los Angeles River makes a potential spill a threat  
7 to the entire region. Even if the risks of a major regional disaster related to the  
8 facility are "less than significant," that is not a risk the City should be forced to  
9 consider without having had any jurisdiction whatsoever over the permitting  
10 process.

11 **Response:** This Appeal Comment does not request review of a condition of the  
12 permit. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish  
13 that the Department should grant a review of this issue pursuant to the criteria set forth  
14 in California Code of Regulations, title 22, section 66271.18(a). Further, this Appeal  
15 Comment appears to pertain to matters considered in CEQA process, such as  
16 evaluation of risk and impact on local responders, which are documented in the EIR.  
17 CEQA provides a separate judicial appeal process to resolve disputes concerning  
18 compliance with CEQA. For these reasons, the Department denies the petition for  
19 review of the issues raised in this Appeal Comment.

20 It should be noted that local governments do have authority over facilities like  
21 ISOC I through issuance of land use permits. Through its land use permitting process,  
22 the City will be able to evaluate the proposed expansion and the needs of emergency  
23 response services. The issuance of a permit by the Department is not a shield from  
24 compliance with local land use requirements including provisions of emergency  
25 response services. The DTSC permitting process is only one of several permitting  
26 processes ISOC I must complete in order to construct and operate its proposed units.

27 **Comment 4-6 by Councilmember Huizar (CREATION OF COMMUNITY**

28 **REDEVELOPMENT AGENCY PROJCT AREA)**: Though the Redevelopment Plan,

1 Section 408.4, p. 15, requires submission of all development plans to the Agency and  
2 conformity to the Plan, inter alia, the Community Redevelopment Agency (CRA) has not  
3 had the opportunity to review the development plan concerning the Eastside Adelante  
4 Project Area. However, the Agency has indicated to me that the proposed expansion of  
5 the ISOCI facility conflicts with a number of the goals, objectives and specific  
6 requirements of the Redevelopment Plan, especially in terms of the agency's mission to  
7 improve the quality of the environment, which includes an emphasis on industrial uses  
8 that are environmentally safe. The proposed expansion poses significant  
9 environmental risks which are not appropriate under the CRA's objectives, nor for the  
10 well-being of the people of the City of Los Angeles.

11 **Response:** This Appeal Comment does not request review of a condition of the  
12 permit. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish  
13 that the Department should grant a review of this issue pursuant to the criteria set forth  
14 in California Code of Regulations, title 22, section 66271.18(a). Further, this Appeal  
15 Comment appears to pertain to a CEQA document for this project. CEQA provides a  
16 separate judicial appeal process to resolve disputes concerning compliance with CEQA.  
17 For these reasons, the Department denies the petition for review of the issues raised in  
18 this Appeal Comment.

19 It should be noted that the permit does not exempt the facility from compliance  
20 with local land use permitting requirements. On the contrary, the permit requires such  
21 compliance. The City of Los Angeles can take into account its future land use plans  
22 while acting on OSOCI's conditional land use application for the proposed expansion.  
23 Please also see response to Comment 4-5.

24 **Comment 4-7 by Councilmember Huizar (LOCAL LAND USE DISCRETION/**

25 **TANNER ACT)**: The Final EIR erroneously states that ISOCI has submitted a Notice of  
26 Intent. The comment further states that JRJ Associates, representing ISOCI, submitted  
27 a notice of intent for a specified hazardous waste project under Health and Safety Code  
28 26199.7 in December 1995. ISOCI filed a conditional use permit application to

1 modernize its facility on August 1, 1996, under City Plan Case number 1996-0288-CU.  
2 However, this case was terminated by the City Planning Department by letter dated  
3 December 20, 2004, for lack of response by the applicant. Further, the currently  
4 proposed expansion includes a 2.64 acre parcel not covered by the previous  
5 application. The Health and Safety Code, section 25199.7, states "A notice of intent is  
6 not transferable to a location other than the specific location specified in the notice..."

7 **Response:** This Appeal Comment does not request review of a condition of the  
8 permit. Further, this Appeal Comment is related to local land use permit application,  
9 requirements of the Tanner Act regarding filing Notices of Intent, and is possibly related  
10 to the CEQA document for this project. The state of the law is that the only option  
11 available to DTSC is to condition the effectiveness of the permit on the applicant  
12 obtaining any necessary local land use permits. As stated previously, land use  
13 decisions are outside the jurisdiction of DTSC and DTSC has no authority to compel an  
14 applicant to initiate the Tanner process. Further, CEQA provides a separate judicial  
15 appeal process to resolve disputes concerning compliance with CEQA. Therefore,  
16 DTSC finds that Petitioner has failed to meet the burden to establish that the  
17 Department should grant a review of this issue pursuant to the criteria set forth in  
18 California Code of Regulations, title 22, section 66271.18(a). For these reasons, the  
19 Department denies the petition for review of the issues raised in this Appeal Comment.

20 **Comment 4-8 by Councilmember Huizar (MISREPRESENTATION BY THE**

21 **APPLICANT):** ISOCI misrepresented itself and its intentions when it stated in the  
22 application's Project Description that it will "apply for a Conditional Use Permit prior to  
23 completion of the EIR." The EIR process has already been conducted and the  
24 applicant has failed to file a valid Notice of Intent to apply to the City of Los Angeles for  
25 any conditional use permit for the relevant operation/or expansion of their facility.

26 More than 11 years have passed since the ISOCI filed its notice of intent to apply  
27 for a City of Los Angeles Conditional Use Permit which was never acted upon and was  
28 deemed terminated. Therefore, the City of Los Angeles is not now, nor has it been for

1 the past decade, in the position to initiate an Local Assessment Committee (LAC) under  
2 the Tanner Act, which in turn means the people of our City have not had the fullest  
3 opportunity to comment on the parameters of the permit and be part of developing  
4 potential mitigation measures and conditions thereto. The fact that ISOCI has, to date,  
5 (1) failed to act on clear direction that a conditional use permit from the City of Los  
6 Angeles will be required; (2) has failed to file a Notice of Intent for the current scope of  
7 the project, and (3) has failed to re-schedule a meeting to discuss their status and City  
8 requirements is of great concern to me.

9 By not applying for a CUP, ISOCI is circumventing the LAC formation which is  
10 essential to community participation. In other words, the facility has deprived the  
11 community of meaningful participation in the permit determination process by failing to  
12 submit a land use application to local agencies.

13 **Response:** This Appeal Comment does not request review of a condition of the  
14 permit. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish  
15 that the Department should grant a review of this issue pursuant to the criteria set forth  
16 in California Code of Regulations, title 22, section 66271.18(a). For these reasons, the  
17 Department denies the petition for review of the issues raised in this Appeal Comment.

18 DTSC acknowledges that it would have been desirable to run the conditional use  
19 permit process in parallel with DTSC's permit process. However, DTSC lacks the  
20 authority to require the applicant or the City of Los Angeles to proceed with the  
21 conditional use permit process concurrently with the hazardous waste facility permit  
22 process. Issuance of the permit does not shield the facility from compliance with all  
23 applicable regulatory requirements, including local land use requirements.

24 It should be noted that DTSC implemented an extensive public  
25 participation program (see Response 1-3 of the DTSC Response to Comments  
26 Document dated December 18, 2006). The City may conduct further community  
27 out reach activities and consider public input before issuing its conditional land  
28 use decision on the proposed expansion.

1     **5.     Petition filed by CRA/LA**

2     **Comment 5-1 by CRA/LA:** As the lead agency, DTSC should have coordinated its  
3     evaluation of hazardous waste issues associated with the project and opportunities for  
4     public participation with the Tanner Act process.

5             **Response:** This Appeal Comment does not request review of a condition of the  
6     permit. DTSC finds that Petitioner has failed to meet the burden to establish that the  
7     Department should grant a review of this issue pursuant to the criteria set forth in  
8     California Code of Regulations, title 22, section 66271.18(a). For these reasons, the  
9     Department denies the petition for review of the issues raised in this Appeal Comment.

10            Ideally, the permit determination process would occur in tandem with the Tanner  
11     process. However, DTSC cannot withhold its permit determination on the grounds that  
12     the applicant has not been granted a land use permit. Health and Safety Code section  
13     25199.3(a). Please also see response to Appeal Comments 1-2 and 4-8.

14     **Comment 5-2 by CRA/LA:** The proposed development conflicts with the Adelante  
15     Eastside Redevelopment Plan and its objectives in the area of environmental quality,  
16     housing, commercial retail shopping, and industrial development. The proposed uses  
17     are incompatible with the Plan's objective to create an attractive and pleasant  
18     environment in the Project Area.

19            **Response:** Land use decisions are outside the scope of the jurisdiction  
20     of DTSC. The authority to determine compliance with local requirements is  
21     vested in various local agencies, which are duly empowered to consider issues  
22     and applications before them. This Appeal Comment does not request review of  
23     a condition of the permit. DTSC finds that Petitioner has failed to meet the  
24     burden to establish that the Department should grant a review of this issue  
25     pursuant to the criteria set forth in California Code of Regulations, title 22,  
26     section 66271.18(a). For these reasons, the Department denies the petition for  
27     review of the issues raised in this Appeal Comment.

28     **Comment 5-3 by CRA/LA:** The proposed development conflicts with the Boyle Heights

Community Plan and its objectives and policies in the area of commercial redevelopment, industrial objectives, and creation of buffer zones.

**Response:** This Appeal Comment does not request review of a condition of the permit. DTSC finds that Petitioner has failed to meet the burden to establish that the Department should grant a review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For these reasons, the Department denies the petition for review of the issues raised in this Appeal Comment. Please see the Response to Comment 5-2, above, for further explanation.

**Comment 5-4 by CRA/LA:** The proposed expansion conflicts with the Air Quality Element of the City's General Plan.

**Response:** This Appeal Comment does not request review of a condition of the permit. DTSC finds that Petitioner has failed to meet the burden to establish that the Department should grant a review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For these reasons, the Department denies the petition for review of the issues raised in this Appeal Comment. Please see the Response to Comment 5-2, above, for further explanation.

**Comment 5-5 by CRA/LA:** The evaluation of air quality impacts in the Health Risk Assessment is deficient.

**Response:** This Appeal Comment does not request review of a condition of the permit. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the Department should grant a review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). Further, this Appeal Comment pertains to the CEQA documents for this project. CEQA provides a separate judicial appeal process to resolve disputes concerning compliance with CEQA. For these reasons, the Department denies the petition for review of the issues raised in this Appeal Comment.

**Comment 5-6 by CRA/LA:** DTSC should amend the permit to require that ISOCI

1 obtain a determination from CRA/LA that the proposed expansion and modification of  
2 the facility is consistent with the Community Plan before the permit can become  
3 effective, and recirculate a new EIR that evaluates the impacts from conflicts between  
4 the project and the Community Plan as well as measures to mitigate those impacts.

5 **Response:** This Appeal Comment does not request review of a condition of the  
6 permit. DTSC finds that Petitioner has failed to meet the burden to establish that the  
7 Department should grant a review of this issue pursuant to the criteria set forth in  
8 California Code of Regulations, title 22, section 66271.18(a). Please see the Response  
9 to Comment 5-2, above, for further explanation. DTSC cannot withhold its permit  
10 determination on the grounds that the applicant has not been granted a land use  
11 permit. See Health and Safety Code section 25199.3(a).

12 Further, this Appeal Comment requests that a new EIR be recirculated.  
13 Objections to CEQA documents for this project are not resolved in the permit appeal  
14 process. CEQA provides a separate judicial appeal process to resolve disputes  
15 concerning compliance with CEQA. For these reasons, the Department denies the  
16 petition for review of the issues raised in this Appeal Comment.

17 **Comment 5-7 by CRA/LA:** Notice to interested parties and public outreach were  
18 inadequate.

19 **Response:** This Appeal Comment does not request review of a condition of the  
20 permit. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish  
21 that the Department should grant a review of this issue pursuant to the criteria set forth  
22 in California Code of Regulations, title 22, section 66271.18(a). The record does not  
23 show that the notice provided did not meet regulatory notice requirements. The  
24 Department did in fact provide significant public outreach. For further information,  
25 please refer to Comments 1-3, 1-4, and 1-5. For these reasons, the Department denies  
26 the petition for review of the issues raised in this Appeal Comment.

27 **Comment 5-8 by CRA/LA:** The project appears to violate EPA's environmental justice  
28 policy because the Draft EIR does not evaluate its impact on the surrounding



1 community, which already is exposed to nearby facilities that handle hazardous waste.

2       **Response:** This Appeal Comment does not request review of a condition of the  
3 permit. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish  
4 that the Department should grant a review of this issue pursuant to the criteria set forth  
5 in California Code of Regulations, title 22, section 66271.18(a). Further, this Appeal  
6 Comment pertains to the EIR, preparation of which is a part of the CEQA process.  
7 CEQA provides a separate judicial appeal process to resolve disputes concerning  
8 compliance with CEQA. For these reasons, the Department denies the petition for  
9 review of the issue raised in this Appeal Comment.

10 **Comment 5-9 by CRA/LA:** The various documents and analyses upon which DTSC is  
11 basing the proposed action contain material flaws. The Final EIR failed to identify  
12 sensitive receptors near the ISOC facility.

13       **Response:** This Appeal Comment does not request review of a condition of the  
14 permit. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish  
15 that the Department should grant a review of this issue pursuant to the criteria set forth  
16 in California Code of Regulations, title 22, section 66271.18(a). Further, this Appeal  
17 Comment pertains to the EIR, preparation of which is a part of the CEQA process.  
18 CEQA provides a separate judicial appeal process to resolve disputes concerning  
19 compliance with CEQA. For these reasons, the Department denies the petition for  
20 review of the issue raised in this Appeal Comment.

21 **Comment 5-10 by CRA/LA:** Also, the Fact Sheet is flawed and inaccurate. This Fact  
22 Sheet is misleading in that it fails to adequately describe the proposed activities.  
23 Specifically, the fact Sheet:

- 24       • Does not disclose that the facility plans to accept and manage up to 380  
25       RCRA hazardous waste codes, including cyanide-containing wastes and  
26       ignitable hazardous wastes
- 27       • Does not explain that any of the 380 RCRA waste codes may be stored in  
28       unprotected rail cars on a rail spur for up to one year;

- Does not explain that the rail spur has an inadequate containment system
- Provides an unrealistic picture of facility's compliance history ... and;
- Inaccurately describes the health risks posed by the proposed operation.

**Response:** This Appeal Comment does not request review of a condition of the permit. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the Department should grant a review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For these reasons, the Department denies the petition for review of the issue raised in this Appeal Comment. By way of explanation, the Fact Sheet is meant to provide basic summary information about the facility, the action being taken by the Department and how interested persons can participate in the Department's proposed decision. The Fact Sheet adequately describes the proposed action, and refers the reader to the Draft Permit and associated documents. The Fact Sheet lists DTSC staff who may be contacted for additional information.

**Comment 5-11 by CRA/LA:** DTSC has not adopted any mitigation measures proposed by the Agency to reduce land use impacts.

**Response:** This Appeal Comment does not request review of a condition of the permit. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the Department should grant a review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). Further, this Appeal Comment pertains to the EIR, preparation of which is a part of the CEQA process. CEQA provides a separate judicial appeal process to resolve disputes concerning compliance with CEQA. For these reasons, the Department denies the petition for review of the issue raised in this Appeal Comment.

1 **VI. ORDER**

2 For the reasons set forth above, the Department has determined that Appeal  
3 Comments 1-7, 1-9, 1-11, 1-12, 1-13, 1-16, 1-17, 1-20, 1-21, 1-22, 1-23, 1-26, 1-27,  
4 1-28, 1-29, 1-30, 3-1, 3-2, 3-3, and 3-4 meet the criteria for granting a review pursuant  
5 to California Code of Regulations, title 22, section 66271.18(a) and the Department is  
6 granting review of these Comments. The Department finds, however, that Petitioners  
7 have failed to demonstrate that the remainder of the Appeal Comments meet the  
8 criteria for review. Therefore, the Department is denying all other portions of the  
9 petitions for review.

10 Pursuant to California Code of Regulations, title 22, section 66271.18(c), the  
11 Department will establish a briefing schedule for this appeal, during which time  
12 interested parties may file written arguments pertaining to the issues of the Appeal  
13 Comments for which the review has been granted. All arguments must be  
14 accompanied by supporting rationale.

15 Arguments filed after the close of the briefing schedule or comments relating to  
16 issues other than those for which review has been granted will not be accepted. The  
17 briefing schedule and this Order will be announced in a public notice pursuant to  
18 California Code of Regulations, title 22, section 66271.18(c). The briefing period will be  
19 put forth in the public notice and the actual closing date will be specified in the public  
20 notice. All arguments pertaining to the Appeal Comments that have been granted  
21 review must be filed in writing, postmarked by the date specified in the public notice,  
22 and mailed to:

23  
24 Mr. Mohinder S. Sandhu, P.E., Chief  
25 Standardized Permitting and Corrective Action Branch  
26 Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

27 Pursuant to California Code of Regulations, title 22, section 66271.15, the  
28 contested permit conditions and uncontested conditions which are not severable from

1 the contested permit conditions are stayed pending completion of the briefing period.  
2 The conditions in the permit for which review has been granted are not severable from  
3 those which are not being reviewed. Therefore, all provisions of the permit decision  
4 issued for this Facility on December 18, 2006, are hereby stayed pending the decision  
5 after the briefing of the Appeal Comments for which review has been granted.

6  
7 Date: June 29, 2007

8  
9 //original signed by//

10 Mohinder S. Sandhu, P.E., Chief  
11 Standardized Permitting and Corrective Action Branch  
12 Department of Toxic Substances Control  
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